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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RANDY SIMON,

Plaintiff and Respondent,

v.

STEPHANIE MARSHALL,

Defendant and Appellant.

B266309

(Los Angeles County
Super. Ct. No. BC462276)

APPEAL from an order of the Superior Court of
Los Angeles County; William F. Fahey, Judge. Affirmed.

Gibson Law and Richard Gibson for Defendant and
Appellant.

Tovar & Cohen, René Tovar, and David J. Cohen for
Plaintiff and Respondent.

Stephanie Marshall raises two issues on appeal. She contends that the trial court should have ordered a Ferrari automobile transferred to a levying officer rather than to respondent Randy Simon. She also contends that the trial court should not have decided the issue of ownership of that Ferrari as a “side issue” at a hearing requesting turnover of that vehicle. We disagree with both contentions and affirm the order.¹

BACKGROUND

On April 19, 2012, Randy Simon, as plaintiff, and John Marshall (Stephanie Marshall’s father),² as defendant, entered into a stipulation for entry of judgment in which John agreed to pay \$350,000 to Simon to settle Simon’s complaint against John (instant action, No. BC462276). Counsel for each party and the trial court signed the stipulation. On August 5, 2013, the trial court entered judgment against John in the amount of \$397,093.58.

On August 13, 2013, Simon filed a second action (No. BC518042) against John to enforce Simon’s judgment against him.³

¹ Stephanie Marshall appeals pursuant to Code of Civil Procedure section 708.180, subdivision (a).

² Because John Marshall and Stephanie Marshall share a last name, we will refer to them by their first names to avoid confusion. No disrespect is intended.

³ On November 26, 2013, the trial court ordered the two cases related.

On September 19, 2013, the clerk of the Los Angeles Superior Court issued a writ of execution in favor of Simon and against John in the amount of \$400,382.36.

On October 1, 2013, Simon filed an ex parte application, under sections 699.040 and 708.180 of the Code of Civil Procedure⁴ for a turnover order for John's Ferrari. In support, Simon provided the declaration of Scott I. Ross, his investigator, who stated that, on September 24, 2013, he went to John's home, where John keeps his Ferrari. John told Ross that he had owned the Ferrari for 27 years and that "the Ferrari was 'mine until I die.' [John] stated that he had the Ferrari transferred into the name of Stephanie . . . for 'estate taxes and things like that.'" Ross also stated in his declaration that, "[w]hen discussing having put assets in his daughter's name, John . . . said that was how [John's] father had done some things."

The court set a hearing on Simon's turnover request. The hearing was continued from time to time. On December 5, 2013, the parties filed a "Joint Recommendation *Re* December 11, 2013 Hearing" (capitalization omitted), in which Simon, John and Stephanie agreed and proposed that Carl Steuer would be the automobile dealer to hold and sell the Ferrari "if the car is ordered by the [c]ourt to be sold." Via order filed on December 11, 2013, Simon's counsel and counsel for John and Stephanie agreed that the Ferrari be transported to Carl Steuer of Blackhorse Motor Sports for storage.

⁴ Unless otherwise noted, further statutory references are to the Code of Civil Procedure.

The trial court heard the matter on March 7, 2014, and counsel for Simon, John, and Stephanie⁵ appeared. Scott testified in accordance with his earlier declaration. John testified that he transferred the Ferrari to Stephanie to avoid foreclosure on the lien against the car; and although she testified that she made payments on the Ferrari loan, Stephanie further testified that her father gave her the funds to pay that loan. Fernando Linares of City National Bank testified regarding the transfers of funds between the accounts of John and Stephanie.

The trial court ordered the parties to file posthearing briefs and to file proposed findings of fact and conclusions of law.

On April 4, 2014, before the trial court issued an order after the hearing, John filed a petition for bankruptcy under Chapter 7. All state court proceedings were stayed. Via order entered on August 21, 2014, the bankruptcy court approved a stipulation between John's bankruptcy trustee and Simon, granting Simon's motion for relief from the bankruptcy stay for the sole purpose of permitting the Los Angeles Superior Court to enter a final order in this matter.

On February 4, 2015, the bankruptcy court approved the sale of the Ferrari to Simon in exchange for Simon's payment of \$160,000 in cash and Simon's waiver of right—as an estate creditor—to a pro rata share of the \$160,000 payment. That order provides that Simon is a good faith

⁵ On October 16, 2013, Stephanie sat for a debtor examination. She is not a party to the instant action.

purchaser and assigns all of John's rights in the Ferrari to Simon and, as to the bankruptcy estate's interest in that Ferrari, "any rights that the Trustee or the Estate have or may have to seek any turnover order(s), as well as rights to avoid fraudulent and preferential transfers by the Debtor."

On August 20, 2015, the superior court entered its findings of fact and conclusions of law: "The Marshalls claim[] that Defendant transferred the Ferrari to Stephanie. However, when Scott Ross testified that Defendant admitted the Ferrari was his 'until the day he died' and that Stephanie was only on title as a convenience, Mr. Ross'[s] testimony went completely uncontradicted. . . . And, the testimony that Stephanie had to assume the Ferrari loan because the Ferrari was going to be foreclosed upon or repossessed . . . , is unsupported by any written evidence indicating foreclosure or repossession. . . . [¶] Based on the above, the Court finds neither Defendant, nor Stephanie, credible witnesses."

The court further concluded: "[I]f the (purported) transfer of the Ferrari from Marshall to Stephanie occurred, it was a (fraudulent) transfer of legal title only and that Marshall always retained an equitable interest in the Ferrari. Furthermore, any such transfer was made with the actual intent to hinder[,] delay and defraud Simon in the enforcement of his Judgment; and without reasonably equivalent value in exchange while the transferor had unreasonably small assets."

On June 16, 2015, the superior court entered a final judgment, granting possession of the Ferrari to Simon and transferring title to him: "1. Because the 1973 Ferrari

(VIN # 04376) was fraudulently transferred by Defendant John Marshall to Stephanie Marshall as part of a scheme to defraud Plaintiff Randy Simon and other creditors, the Ferrari and title thereto is adjudged to be Marshall's property, and therefore, Plaintiff Randy Simon is entitled to an order in his favor with respect to his Application for Turnover Order in Aid[] of Execution of Judgment and a Judgment granting Plaintiff Randy Simon possession of the Ferrari in question; [¶] 2. Because, as part of Defendant John Marshall's scheme to defraud Plaintiff Randy Simon and other creditors, Defendant John Marshall transferred substantial cash amounts to Stephanie Marshall, which she in turn used to make the payments on the Ferrari, it is adjudged that Stephanie Marshall has no interest in the Ferrari, and therefore, Judgment is entered in Plaintiff Randy Simon's favor and against Stephanie Marshall with respect [to] her claim for reimbursement with respect to the Ferrari (including with respect to any amounts she purports to have paid in connection with the Ferrari in question)."

John and Stephanie appealed, but John is no longer a party to this appeal.⁶

⁶ We dismissed John as an appellant for lack of standing and dismissed appellants' opening brief insofar as it applies to John.

DISCUSSION

Stephanie contends that the trial court erred in ordering her to turn over the Ferrari directly to Simon, rather than ordering her to turn the Ferrari over to a levying officer for sale. She cites section 699.040, which provides that, after a writ of execution issues, a judgment creditor may seek a court order for transfer of property and its title to a levying officer.⁷ Although normally a levying officer would sell the property to assure that any amount over the debt goes to the debtor, here that procedure was unnecessary because there was no reason to sell the car; the bankruptcy trustee had sold the car to Simon and the trial court transferred title to Simon.

Stephanie further contends that the court should not have ruled upon a fraudulent transfer action “as a side issue” in a proceeding pursuant to either section 699.040

⁷ Section 699.040 provides in relevant part: “(a) If a writ of execution is issued, the judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs or a court rule so requires, for an order directing the judgment debtor to transfer to the levying officer either or both of the following: [¶] (1) Possession of the property sought to be levied upon if the property is sought to be levied upon by taking it into custody. [¶] (2) Possession of documentary evidence of title to property of or a debt owed to the judgment debtor that is sought to be levied upon. An order pursuant to this paragraph may be served when the property or debt is levied upon or thereafter. [¶] (b) The court may issue an order pursuant to this section upon a showing of need for the order.”

(as she claims in her opening brief) or section 708.180 (as she claims in her reply brief).⁸ She asserts that the matter can be resolved only upon trial in Simon's second action in the superior court, No. BC518042.

Stephanie is correct that a third party's claim to property owned by a judgment debtor is not justiciable under section 699.040, which concerns writs of execution. However, the evidentiary hearing was proper under section 708.180,⁹ because, in a proceeding under section 708.180, a trial court has the jurisdiction to make a conclusive determination of the validity of a claim made by a third party against property owned by a judgment debtor.

Stephanie claims that the matter is excluded from consideration under subdivision (b)(2) of section 708.180, which bars a court from making that conclusive determination "if the third person's claim is made *in good faith*" and "a civil action (including a creditor's suit) is pending with respect to the interests in the property or the existence of the debt." (Italics added.)

⁸ Although the trial court did not expressly cite either statute in its order, Simon cited both statutes in his motion.

⁹ Subdivision (a) of section 708.180 provides in relevant part: "[I]f a third person . . . claims an interest in the property adverse to the judgment debtor or denies the debt, the court may, if the judgment creditor so requests, determine the interests in the property or the existence of the debt. The determination is conclusive as to the parties to the proceeding and the third person, but an appeal may be taken from the determination."

Although a civil action is pending in the superior court (No. BC518042), Stephanie's claim to the Ferrari does not preempt an evidentiary hearing on ownership of the Ferrari, because she did not satisfy the primary condition set forth in the statute—that her claim is in good faith. Stephanie had the burden to prove the good faith of the claim by a preponderance of the evidence. (*Evans v. Paye* (1995) 32 Cal.App.4th 265, 281.) “[G]ood faith” means an honest statement of mind, no intent to defraud, and the absence of deceit and collusion. (*Id.* at pp. 282–283.) She states only that she had title to the Ferrari, but does not dispute, nor even mention, her testimony that her father gave her the funds to pay that loan.

Here the conditions for making section 780.180 findings as to the validity of a third party claim were met. Stephanie was a third party making a claim, Simon was a creditor, and the court was called upon to determine the interests in the property.

Without challenging the factual findings of the trial court to the contrary, Stephanie reiterates on appeal that she owned the Ferrari and her father did not; she insists that she did not make a mere claim to the Ferrari; she had legal title to the Ferrari. This is true but irrelevant, because the very purpose of section 708.120 is to litigate such claims.

DISPOSITION

The order is affirmed. Respondent is awarded costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.